

## **EXHIBIT 9**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

FOUR HUNDRED SIXTY-THREE THOUSAND  
FOUR HUNDRED NINETY-SEVEN DOLLARS  
AND SEVENTY-TWO CENTS (\$463,497.72) IN  
U.S. CURRENCY FROM BEST BANK ACCOUNT  
#259502677, NINETEEN THOUSAND NINE  
HUNDRED THIRTY-SIX DOLLARS AND  
SEVENTY-SEVEN CENTS (\$19,936.77) IN U.S.  
CURRENCY FROM BEST BANK ACCOUNT  
#259208558, ONE HUNDRED ONE THOUSAND  
SEVEN HUNDRED THREE DOLLARS AND  
TEN CENTS (\$101,703.10) IN U.S. CURRENCY  
FROM COUNTRYWIDE BANK ACCOUNT  
#9202255890, NINETEEN THOUSAND NINE  
HUNDRED TWELVE DOLLARS AND SEVEN  
CENTS (\$19,912.07) IN U.S. CURRENCY FROM  
COMERICA BANK ACCOUNT #0026200766,  
and FIFTY-ONE THOUSAND FOUR HUNDRED  
DOLLARS AND SIXTY-THREE CENTS  
(\$51,400.63) IN U.S. CURRENCY FROM  
COUNTRYWIDE BANK ACCOUNT #9201147528

Defendants.

STACEY HOGAN GIANOPLOS and RONALD  
G. CARSON

And

H.D. SMITH WHOLESALE DRUG CO., INC.

Claimants.

---

**H.D. SMITH WHOLESALE DRUG CO., INC'S MOTION IN LIMINE  
TO EXCLUDE WITNESS TESTIMONY OF JOSEPH RANNAZZISI**

Claimant, H.D. Smith Wholesale Drug Co., Inc., and its officers, directors, employees, agents, subsidiaries, and affiliates, ("H.D. Smith"), by and through the undersigned attorneys, move this Court for an Order *in limine* excluding the testimony of Joseph Rannazzisi ("Ranazzisi") for the reasons set forth in the accompanying Brief in Support of Motion *in Limine* to Exclude Witness Testimony of Joseph Rannazzisi.

WHEREFORE, Claimant, H.D. Smith Wholesale Drug Co., Inc. respectfully request an Order *in limine* excluding the introduction of the testimony of Joseph Rannazzisi, and granting such other and further relief as the Court deems appropriate.

Respectfully submitted,

Date: July 27, 2011

/s/ Jason R. Barclay

Jason R. Barclay  
**BARNES & THORNBURG LLP**  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535  
Telephone: (317) 231-7250  
Facsimile: (317) 231-7433

and

William J. Leeder III (P70708)  
**BARNES & THORNBURG LLP**  
171 Monroe Avenue, N.W., Suite 1000  
Grand Rapids, MI 49503  
bleeder@btlaw.com  
Phone: (616) 742-3930

Attorneys for Claimant H.D. Smith  
Wholesale Drug Co., Inc

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

FOUR HUNDRED SIXTY-THREE THOUSAND  
FOUR HUNDRED NINETY-SEVEN DOLLARS  
AND SEVENTY-TWO CENTS (\$463,497.72) IN  
U.S. CURRENCY FROM BEST BANK ACCOUNT  
#259502677, NINETEEN THOUSAND NINE  
HUNDRED THIRTY-SIX DOLLARS AND  
SEVENTY-SEVEN CENTS (\$19,936.77) IN U.S.  
CURRENCY FROM BEST BANK ACCOUNT  
#259208558, ONE HUNDRED ONE THOUSAND  
SEVEN HUNDRED THREE DOLLARS AND  
TEN CENTS (\$101,703.10) IN U.S. CURRENCY  
FROM COUNTRYWIDE BANK ACCOUNT  
#9202255890, NINETEEN THOUSAND NINE  
HUNDRED TWELVE DOLLARS AND SEVEN  
CENTS (\$19,912.07) IN U.S. CURRENCY FROM  
COMERICA BANK ACCOUNT #0026200766,  
and FIFTY-ONE THOUSAND FOUR HUNDRED  
DOLLARS AND SIXTY-THREE CENTS  
(\$51,400.63) IN U.S. CURRENCY FROM  
COUNTRYWIDE BANK ACCOUNT #9201147528

Defendants.

STACEY HOGAN GIANOPLOS and RONALD  
G. CARSON

And

H.D. SMITH WHOLESALE DRUG CO., INC.

Claimants.

**H.D. SMITH WHOLESALE DRUG CO., INC'S  
BRIEF IN SUPPORT OF MOTION IN LIMINE  
TO EXCLUDE WITNESS TESTIMONY OF JOSEPH RANNAZZISI**

**CONCISE STATEMENT OF ISSUE PRESENTED**

1. Whether the Court should exclude witness testimony of Joseph Rannazzisi in accordance with Rule 402, Rule 701, and Rule 702.

## **CONTROLLING AUTHORITY**

### Cases:

1. *Hilgraeve Corp. v McAfee Associates, Inc.*, 70 F.Supp.2d 738, 755 (E.D. Mich. 1999).
2. *Park West Galleries, Inc. v. Global Fine Art Registry, L.L.C.*, 2010 WL 987772 (E.D. Mich March 12, 2010).

### Statutes and Rules:

1. Federal Rule of Evidence 402.
2. Federal Rule of Evidence 701.
3. Federal Rule of Evidence 702.

## I. INTRODUCTION

After three years of litigation and months of discovery, on July 18, 2011 – 9 days before the discovery cutoff date and three weeks before trial in this matter -- the United States sent correspondence to counsel for H.D. Smith indicating that it intended to call Joseph Rannazzisi at the trial in this matter. *See Exhibit A.* Since the Government failed to file a pre-trial disclosure by the deadline set out in Rule 26(a)(3)(B), this correspondence was the first time that H.D. Smith was placed on notice that the United States intended to call Rannazzisi as a witness in this matter. Specifically, the United States represented that “we intend to call Mr. Rannazzisi at trial to testify as to the substance of the subject memoranda, his authority to issue policy statements interpreting 21 CFR § 1301.74 in the statutory framework of 21 U.S.C. § 823(b)(1), and the purpose and intent of the distributor briefings formulated and conducted in 2005, 2006 and 2007.” *See Exhibit B.* Perhaps even more galling, the Government dictated that Rannazzisi would only be available for deposition in Arlington, Virginia on July 22 at 2:00 p.m.(four days after their disclosure), July 25 in the morning only (seven days after their correspondence), or August 4 (after the discovery cut-off and only five days before trial). When undersigned counsel indicated that we could not be available on such short notice given other client commitments, the Government refused to make Rannazzisi available at any other time. Notwithstanding the untimely disclosure of Rannazzisi as a witness, his testimony should also be excluded because it is both a blatant attempt to introduce legal opinions via a lay witness and otherwise irrelevant.

## II. LEGAL ARGUMENT

For the purposes of this Motion, it bears repeating that the narrow issue to be decided by this Court is limited to whether H.D. Smith was willfully blind to the criminal activity which

allegedly occurred at Safescript Pharmacy #19 and gave rise to the seizure of the funds at issue in this matter such that H.D. Smith does not satisfy the requirements of 18 U.S.C. § 983(d) as an innocent owner.

Rannazzisi had no conversations or direct interaction with any representatives of H.D. Smith and has no direct knowledge of the investigation of Safescript Pharmacy #19. Furthermore, Rannazzisi's testimony is unnecessary as the documents he authored in his role as the Deputy Assistant Administrator for the Office of Diversion of Control speak for themselves. *See Exhibit C and Exhibit D.* Additionally, Rannazzisi has no knowledge of what steps H.D. Smith may have taken in response to any correspondence and/or memoranda which Rannazzisi sent to H.D. Smith.

Moreover, H.D. Smith concedes that it received the various memoranda drafted by Rannazzisi and has even offered to stipulate to the admissibility of each document. *See Exhibit B.* As such, there is nothing even remotely relevant about Rannazzisi's potential testimony. FRE 402 provides that “[e]vidence which is not relevant is not admissible.” In short, Rannazzisi has no relevant testimony to offer with respect to resolving the very narrow issue before this Court.

Perhaps even more troubling is that fact that the United States appears to rely upon Rannazzisi to offer expert testimony regarding the interpretation of “21 CFR § 1301.74 in the statutory framework of 21 U.S.C. § 823(b)(1).” *See Exhibit A.* Such testimony clearly falls within the ambit of FRE 702 as it constitutes the “scientific, technical or otherwise specialized knowledge” which is typically the subject of expert testimony. More importantly, FRE 701 prohibits non-experts from testifying in the form of opinions regarding legal conclusions. *Park*

*West Galleries, Inc. v. Global Fine Art Registry, L.L.C.*, 2010 WL 987772 (E.D. Mich March 12, 2010).

Rannazzisi is not an attorney nor was he ever disclosed as an expert witness. Indeed, as set forth above, Rannazzisi has no knowledge, expert or otherwise, which has any relevance to the issue of whether H.D. Smith was willfully blind to the alleged criminal conduct at Safescript Pharmacy #19. Legal opinions when offered by a non-lawyer are both “incompetent and unpersuasive.” *Id. U.S. v Canipe*, 509 F.3d 597, 603 (6<sup>th</sup> Cir. 2009). FRE 701 does not provide a safe haven for the improper disclosure of Rannazzisi as a lay witness. FRE 701 “does not permit a lay witness to express an opinion as to matters which a beyond a realm of common experience and which require the special skill and knowledge of an expert witness.” *Hilgraeve Corp. v McAfee Associates, Inc.*, 70 F.Supp.2d 738, 755 (E.D. Mich. 1999) *affirmed in part, vacated in part on other grounds* at 224 F.3d 1349 (Fed. Cir. Mich. 2000)(citations omitted).

Indeed, the United States cannot use FRE 701 “as a back door attempt to admit testimony of an expert nature under the guise of lay opinion.” *Id.* Even assuming *arguendo* that Rannazzisi is qualified to opine on such topics, he was never disclosed as an expert witness and, therefore, cannot now offer such testimony. Furthermore, the untimely disclosure of Rannazzisi seriously prejudices H.D. Smith’s ability to prepare for trial since H.D. Smith has not been given a reasonable opportunity to depose him.

WHEREFORE, Claimant, H.D. Smith Wholesale Drug Co., Inc. respectfully request an Order *in limine* excluding the introduction of the testimony of Joseph Rannazzisi, and granting such other and further relief as the Court deems appropriate.

Date: July 27, 2011

/s/ Jason R. Barclay

Jason R. Barclay

**BARNES & THORNBURG LLP**

11 South Meridian Street

Indianapolis, Indiana 46204-3535

Telephone: (317) 231-7250

Facsimile: (317) 231-7433

and

William J. Leeder III (P70708)

**BARNES & THORNBURG LLP**

171 Monroe Avenue, N.W., Suite 1000

Grand Rapids, MI 49503

bleeder@btlaw.com

Phone: (616) 742-3930

Attorneys for Claimant H.D. Smith  
Wholesale Drug Co., Inc

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

FOUR HUNDRED SIXTY-THREE THOUSAND  
FOUR HUNDRED NINETY-SEVEN DOLLARS  
AND SEVENTY-TWO CENTS (\$463,497.72) IN  
U.S. CURRENCY FROM BEST BANK ACCOUNT  
#259502677, NINETEEN THOUSAND NINE  
HUNDRED THIRTY-SIX DOLLARS AND  
SEVENTY-SEVEN CENTS (\$19,936.77) IN U.S.  
CURRENCY FROM BEST BANK ACCOUNT  
#259208558, ONE HUNDRED ONE THOUSAND  
SEVEN HUNDRED THREE DOLLARS AND  
TEN CENTS (\$101,703.10) IN U.S. CURRENCY  
FROM COUNTRYWIDE BANK ACCOUNT  
#9202255890, NINETEEN THOUSAND NINE  
HUNDRED TWELVE DOLLARS AND SEVEN  
CENTS (\$19,912.07) IN U.S. CURRENCY FROM  
COMERICA BANK ACCOUNT #0026200766,  
and FIFTY-ONE THOUSAND FOUR HUNDRED  
DOLLARS AND SIXTY-THREE CENTS  
(\$51,400.63) IN U.S. CURRENCY FROM  
COUNTRYWIDE BANK ACCOUNT #9201147528

Defendants.

STACEY HOGAN GIANOPLOS and RONALD  
G. CARSON

And

H.D. SMITH WHOLESALE DRUG CO., INC.

Claimants.

Civil No. 2:08-CV-11564  
Honorable David M. Lawson  
Magistrate Judge Mona K. Majzoub

**CERTIFICATE OF SERVICE**

It is hereby certified that service of **H.D Smith Wholesale Drug Co., Inc.'s Motion in Limine to Preclude Witness Testimony of Joseph Rannazzisi and Motion in Limine to**

**Preclude Witness Testimony of David J. Plummer**, along with this **Certificate of Service** has been made on July 27, 2011 upon the following counsel of record *via the Court's electronic filing service*:

T.N. Ziedas  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, MI 48226  
Email: peter.ziedas@usdoj.gov

/s/ Jason R. Barclay  
Jason R. Barclay  
**BARNES & THORNBURG LLP**  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535  
Telephone: (317) 231-7250  
Facsimile: (317) 231-7433

and

William J. Leeder III (P70708)  
**BARNES & THORNBURG LLP**  
171 Monroe Avenue, N.W., Suite 1000  
Grand Rapids, MI 49503  
bleeder@btlaw.com  
Phone: (616) 742-3930

Attorneys for Claimant H.D. Smith  
Wholesale Drug Co., Inc.